

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

MYMAIL, LTD.,

Plaintiff,

v.

IAC SEARCH & MEDIA, INC.

Defendant.

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Civil Action No. 2:16-cv-01434

Jury Trial Demanded

PLAINTIFF’S COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff MyMail, Ltd. files this Complaint against IAC Search & Media, Inc. and alleges as follows.

PARTIES

1. Plaintiff MyMail, Ltd. (“MyMail”) is a Texas limited partnership with an office and place business at 5344 County Road 3901, Athens, TX 75752. MyMail was founded in 2003 as an intellectual property development and licensing company providing secure, Internet-related services and efficient web page interaction to Internet service providers, mobile device manufacturers, network carriers, and Internet related toolbar developers. MyMail developed technology providing for the dynamic updating, changing, or modification of toolbar data from remote servers (the “MyMail Toolbar Technology”). Using the MyMail Toolbar Technology, toolbar providers can, for example, dynamically change elements, functions, and buttons on their toolbar(s) for specific, targeted users based on use and individual searches. MyMail has obtained patents covering the MyMail Toolbar Technology and has successfully licensed the patented technology to toolbar providers.

2. Upon information and belief, Defendant IAC Search & Media, Inc. (“IAC”) is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business located at 555 12th Street, Suite 500, Oakland, California, 94607. IAC may be served with process through its registered agent, CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, Texas 75201.

JURISDICTION AND VENUE

3. This is an action for patent infringement arising under the patent laws of the United States of America, Title 35, United States Code. This Court has original jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

4. IAC is engaged in the business of publishing and distributing a browser plug-in called the Ask.com Toolbar that seamlessly integrates with Microsoft Internet Explorer and Mozilla Firefox and appears in a user’s browser to provide alerts about selected weather updates, and “Word of the Day” and functions as a resource for content featured on Ask.com from any web page location (the “Ask.com Toolbar”). The Ask.com Toolbar docks itself to a device’s browser when installed and sits atop the browser at all times. IAC publishes, promotes and distributes the Ask.com Toolbar to users in the United States, including users within this District.

5. Upon information and belief, IAC is subject to this Court’s specific personal jurisdiction because IAC does business in the State of Texas, has designated an agent for service of process in the State of Texas, and has committed acts of infringement in the State of Texas as alleged below. In particular, upon information and belief, IAC is subject to the specific personal jurisdiction of this Court because MyMail’s claims for patent infringement against IAC arise from its acts of infringement in the State of Texas. These acts of infringement include providing the infringing Ask.com Toolbar to users of the Ask.com Toolbar in the State of Texas and

causing the browser on a user device to display the toolbar and perform the other functions of the asserted claims. Therefore, this Court has personal jurisdiction over IAC under the Texas long-arm statute, TEX. CIV. PRAC. & REM. CODE §17.042.

6. Venue is proper in this District under 28 U.S.C. §§ 1391(c) and 1400(b). Upon information and belief, IAC has engaged in acts of infringement in the State of Texas described here sufficient to subject it to personal jurisdiction in this District if the District were a separate State.

THE PATENTS-IN-SUIT

7. On September 25, 2012 the United States Patent and Trademark Office issued United States Patent No. 8,275,863 (the “’863 Patent”) entitled “Method of Modifying a Toolbar,” a true copy of which is attached as Exhibit 1.

8. On April 28, 2015, the United States Patent and Trademark Office issued United States Patent No. 9,021,070 (the “’070 Patent”) entitled “Dynamically Modifying a Toolbar,” a true copy of which is attached as Exhibit 2. The ’070 Patent is a continuation of the ’863 Patent. The ’863 and ’070 Patents are collectively referred to as the “Asserted Patents.”

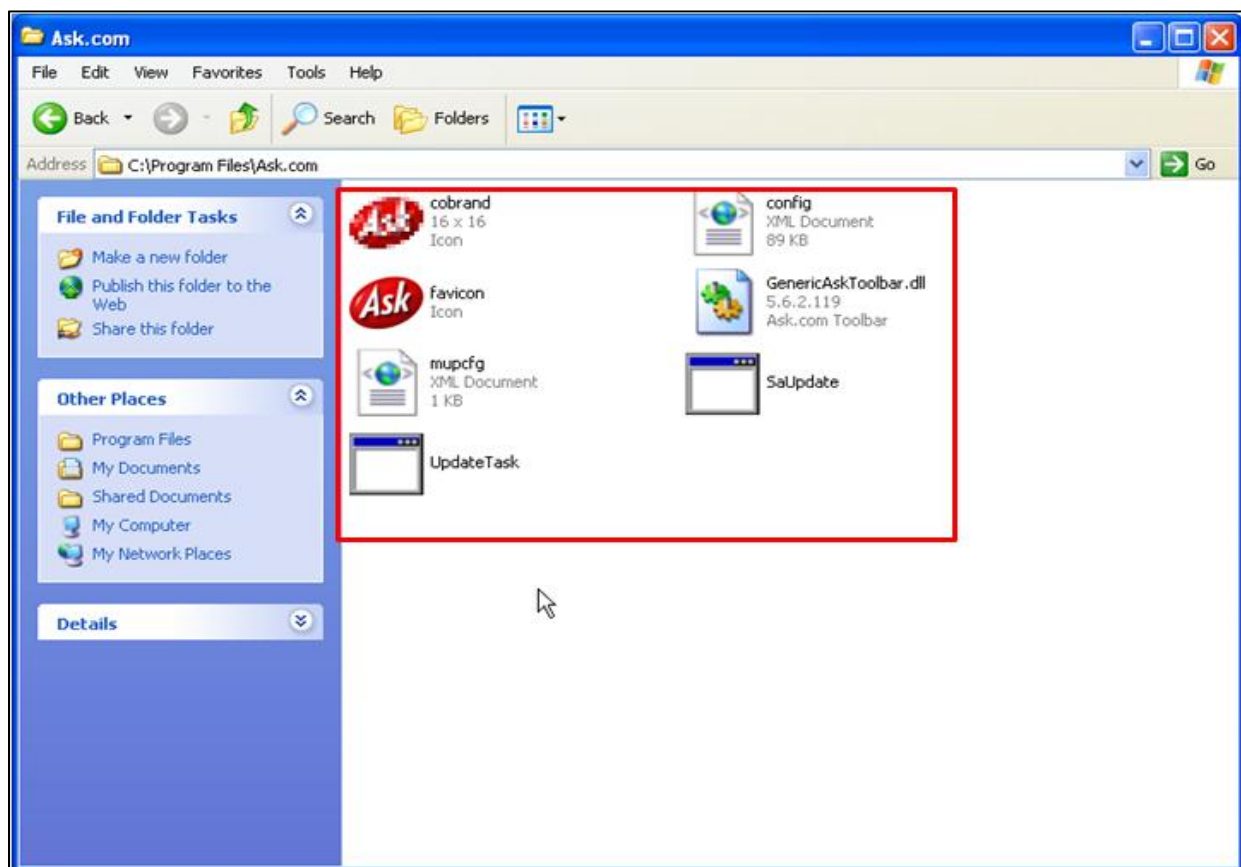
9. MyMail is the assignee of the ’863 and ’070 Patents, and has the exclusive right to sue for and recover all past, present and future damages for infringement of the Asserted Patents.

ALLEGATIONS COMMON TO ALL CLAIMS

10. The Ask.com Toolbar software causes the toolbar to be displayed on a user Internet device (*i.e.*, a device that can communicate with other devices via the Internet) that includes toolbar buttons. For example, the Ask.com Toolbar displayed on a user’s Internet device includes the “Weather” and “Word of the Day” buttons indicated in FIGURE 1.

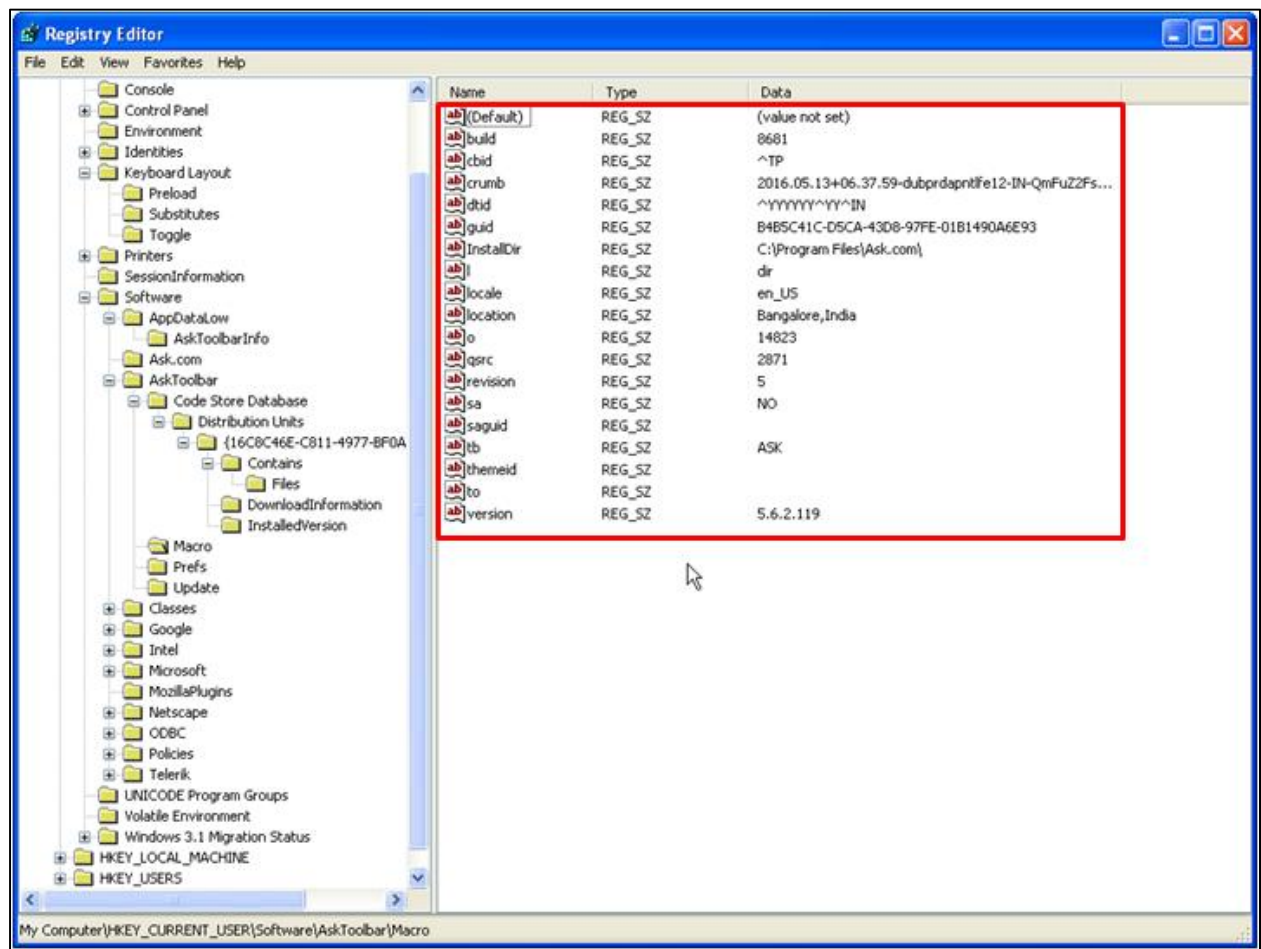
FIGURE 1

11. The toolbar buttons on the Ask.com Toolbar are defined by toolbar data stored in toolbar-defining databases. In particular, the toolbar buttons on the Ask.com Toolbar are defined by toolbar data as indicated in FIGURE 2 below stored in the “C:\Program Files\Ask.com” folder on the user Internet device:

FIGURE 2

12. The toolbar buttons are also defined by toolbar data as indicated below in FIGURE 3 stored in the Windows System Registry on the user Internet device:

FIGURE 3



13. The “C:\Program Files\Ask.com” folder and the Windows System Registry constitute toolbar defining databases of the user Internet device.

14. The toolbar data of the Ask.com Toolbar comprises a plurality of toolbar button attributes associated with one or more toolbar buttons of the toolbar. For example, as shown below in FIGURE 4, the toolbar data in the “config.xml” file in the “C:\Program Files\Ask.com” folder on the user Internet device includes a plurality of toolbar button attributes associated with the toolbar buttons of the toolbar:

FIGURE 4



15. At least one of the toolbar button attributes (for example, in the “config.xml” toolbar data) identifies a function to be performed by a specific toolbar button upon actuation of the toolbar button. For example, as shown in FIGURE 5 below, the “value” toolbar button attribute for each button in the toolbar includes a function to be performed when the button is actuated:

FIGURE 5

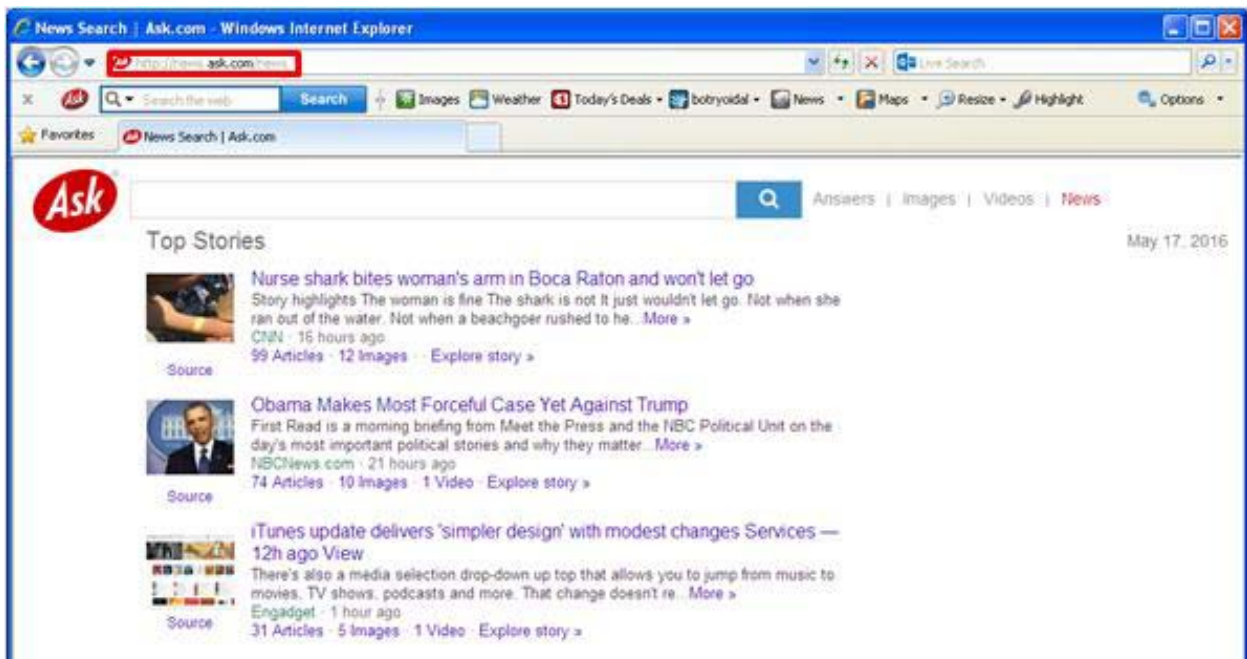


16. When the user clicks the “Top Stories” button on the Ask.com Toolbar, as shown below in FIGURES 6 and 7, a webpage associated with the button is displayed:

FIGURE 6



FIGURE 7



17. The Ask.com Toolbar performs “A method of modifying a toolbar ...” For example, as shown below in FIGURE 8 the Ask.com Toolbar communicates with server at IP Address 184.86.250.25, to modify the Ask.com Toolbar by, for example, updating the “Word of the Day” that is displayed in the toolbar:

FIGURE 8

#	ClientBeginRequest	X-HostIP	X-Clien...	Result	Protocol	Host	URL
58	22:10:02.453	184.86.250.25	127.0.0.1	200	HTTP	www.dictionary.com	/wordoftheday/wotd.xml?cb=30950

18. The Ask.com Toolbar further performs the step of “the user Internet device automatically sending a revision level of the one or more toolbar-defining databases to a predetermined network address.” For example, as shown below in FIGURE 9 a “GET” request sent from a user Internet device to a predetermined network address such as 184.86.250.25 includes encoded data (red box), and this encoded data changes between different “GET” requests. On information and belief the encoded data includes information which indicates a revision level.

FIGURE 9

#	ClientBeginRequest	X-HostIP	X-Clien...	Result	Protocol	Host	URL
58	22:10:02.453	184.86.250.25	127.0.0.1	200	HTTP	www.dictionary.com	/wordoftheday/wotd.xml?cb=30950
Request Headers [Raw] [Header Definitions]							
GET /wordoftheday/wotd.xml?cb=30950 HTTP/1.1							
Client							
Accept: */*							
User-Agent: Mozilla/4.0 (compatible; MSIE 8.0; Windows NT 5.1; Trident/4.0; .NET CLR 2.0.50							
Cookies							
Cookie							
mseg=59							
Transport							
Connection: Keep-Alive							
Host: www.dictionary.com							

19. The “GET” request is sent from the user Internet device at IP address 127.0.0.1, automatically. For example, as show below in FIGURE 10 the Ask.com Toolbar automatically sends a “GET” request at intervals of 370 minutes, without user intervention, to obtain an updated “Word of the Day”.

FIGURE 10

#	ClientBeginRequest	X-HostIP	X-Clien...	Result	Protocol	Host	URL
57	22:10:02.312	184.86.250.11	127.0.0.1	301	HTTP	dictionary.referenc...	/wordoftheday/wotd.xml?cb=d-dW7
58	22:10:02.453	184.86.250.25	127.0.0.1	200	HTTP	www.dictionary.com	/wordoftheday/wotd.xml?cb=30950
59	04:20:01.546	23.3.70.24	127.0.0.1	301	HTTP	dictionary.referenc...	/wordoftheday/wotd.xml?cb=5gGv
60	04:20:02.765	23.3.70.18	127.0.0.1	200	HTTP	www.dictionary.com	/wordoftheday/wotd.xml?cb=wgeY
61	10:30:01.546	184.86.250.11	127.0.0.1	301	HTTP	dictionary.referenc...	/wordoftheday/wotd.xml?cb=f1qvj
62	10:30:01.843	184.86.250.9	127.0.0.1	200	HTTP	www.dictionary.com	/wordoftheday/wotd.xml?cb=yTT3r
68	16:40:01.546	173.222.148.42	127.0.0.1	301	HTTP	dictionary.referenc...	/wordoftheday/wotd.xml?cb=xtXX
69	16:40:02.031	23.3.70.18	127.0.0.1	200	HTTP	www.dictionary.com	/wordoftheday/wotd.xml?cb=JncRt
100	22:50:01.546	96.17.72.75	127.0.0.1	301	HTTP	dictionary.referenc...	/wordoftheday/wotd.xml?cb=otvHL
101	22:50:01.937	23.3.70.25	127.0.0.1	200	HTTP	www.dictionary.com	/wordoftheday/wotd.xml?cb=MVS8f
102	05:00:01.546	184.86.250.17	127.0.0.1	301	HTTP	dictionary.referenc...	/wordoftheday/wotd.xml?cb=tpyw
103	05:00:02.203	184.86.250.9	127.0.0.1	200	HTTP	www.dictionary.com	/wordoftheday/wotd.xml?cb=THEuA
104	11:10:01.546	23.3.70.9	127.0.0.1	301	HTTP	dictionary.referenc...	/wordoftheday/wotd.xml?cb=ql0Y0
105	11:10:02.781	23.3.70.25	127.0.0.1	200	HTTP	www.dictionary.com	/wordoftheday/wotd.xml?cb=6hOm-
107	17:20:01.546	23.3.70.24	127.0.0.1	301	HTTP	dictionary.referenc...	/wordoftheday/wotd.xml?cb=vG_Io
108	17:20:02.781	23.3.70.18	127.0.0.1	200	HTTP	www.dictionary.com	/wordoftheday/wotd.xml?cb=IVg

20. On information and belief, the Ask.com Toolbar performs the step "a server at the predetermined network address determining, from the revision level, the user Internet device should receive the toolbar update data."

21. The server responds to the "GET" request by sending the user Internet device updated toolbar data in the form of one or more text/xml messages containing the updated toolbar data, as shown below in FIGURE 11.

FIGURE 11

Response Headers	[Raw]	[Header Definitions]
HTTP/1.1 200 OK		
Cache		
Cache-Control: max-age=28491		
Date: Fri, 13 May 2016 16:39:54 GMT		
Expires: Sat, 14 May 2016 00:34:45 GMT		
Entity		
Content-Length: 122		
Content-Type: text/xml		
ETag: "10c740-7a-5329fb536a740"		
Last-Modified: Thu, 12 May 2016 07:00:05 GMT		
Miscellaneous		
Accept-Ranges: bytes		
Server: Apache/2.2.15 (Scientific Linux)		
X-Check-Cacheable: YES		
X-Hostname: @@HOSTNAME@@		
X-Served-By: Classic		
Transport		
Connection: keep-alive		

22. On information and belief, it is inferred that the server determines, from the revision level information in the request headers, the user Internet device should receive the toolbar update data because, as shown below in FIGURE 12, the server responds to the “GET” request by sending updated toolbar data to the user Internet device.

FIGURE 12



23. The Ask.com Toolbar includes the step of receiving at the user Internet device toolbar update data from the Internet. For example, as shown below in FIGURES 13-15 the user Internet device receives the updated toolbar data such as the latest “Word of the Day”, in the form of text/xml messages from the server at IP address 184.86.250.25. The server sends the updated toolbar data in response to determining that the user Internet device should receive updated toolbar data, based on, for example, the requested information in the request.

FIGURE 13

#	ClientBeginRequest	X-HostIP	X-Clien...	Result	Protocol	Host	URL
58	22:10:02.453	184.86.250.25	127.0.0.1	200	HTTP	www.dictionary.com	/wordoftheday/wotd.xml?cb=30950

FIGURE 14

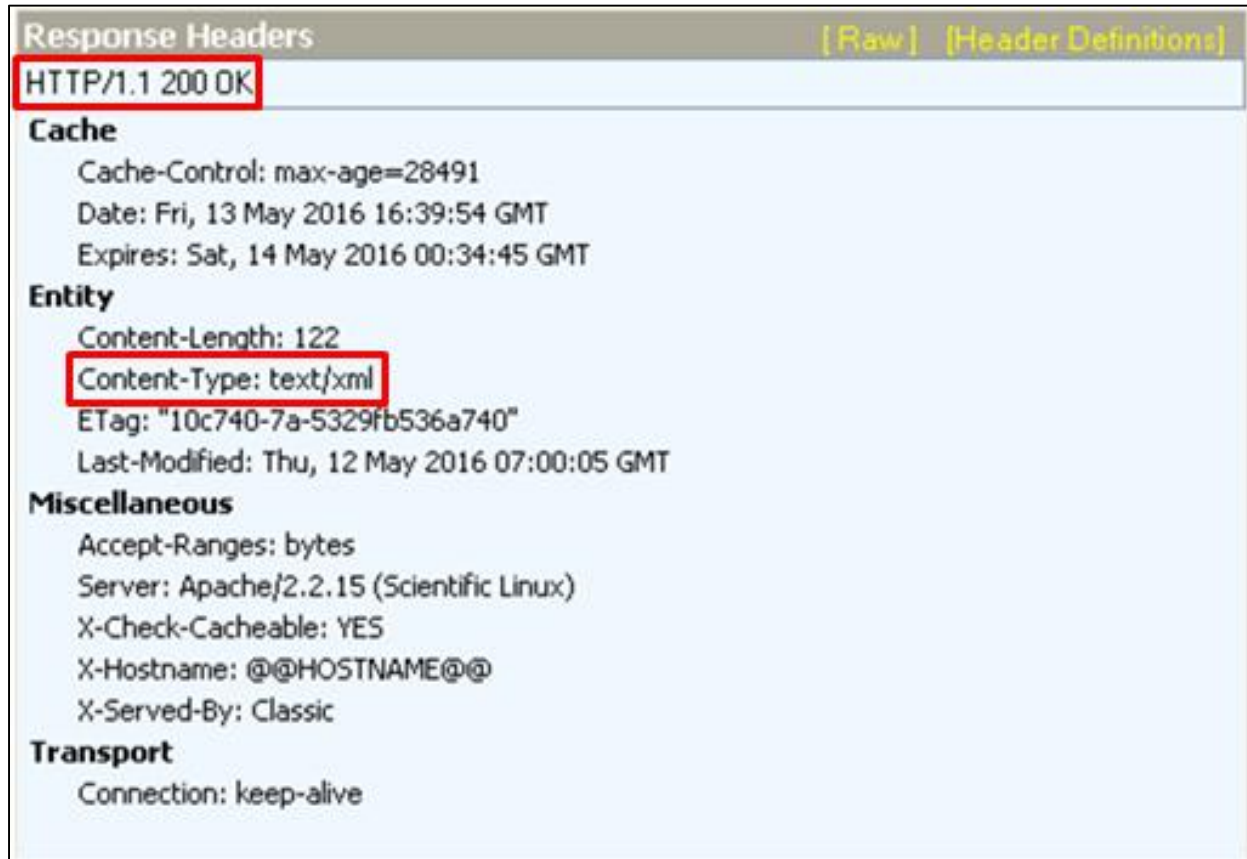


FIGURE 15



24. The Ask.com Toolbar, installed on the user Internet device, performs the step of updating the toolbar with toolbar update data without any user interaction. For example, as shown below in FIGURES 16-18, the user Internet device receives the updated toolbar data such as the latest “Word of the Day”, in the form of text/xml messages from the server at IP address

184.86.250.25. The user Internet device updates the toolbar data by displaying the word on the “Word of the Day” button in the toolbar.

FIGURE 16

#	ClientBeginRequest	X-HostIP	X-Clien...	Result	Protocol	Host	URL
58	22:10:02.453	184.86.250.25	127.0.0.1	200	HTTP	www.dictionary.com	/wordoftheday/wotd.xml?cb=30950

FIGURE 17

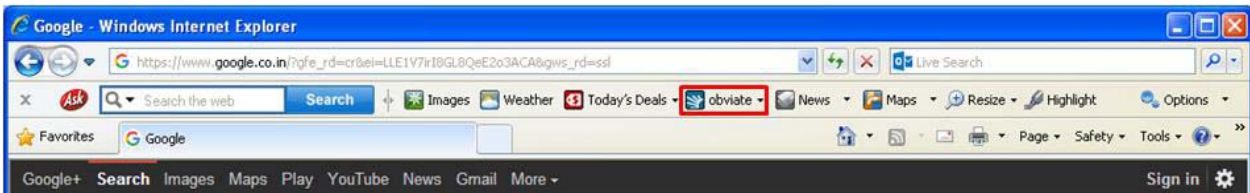
Response Headers	[Raw]	[Header Definitions]
HTTP/1.1 200 OK		
Cache		
Cache-Control: max-age=28491		
Date: Fri, 13 May 2016 16:39:54 GMT		
Expires: Sat, 14 May 2016 00:34:45 GMT		
Entity		
Content-Length: 122		
Content-Type: text/xml		
ETag: "10c740-7a-5329fb536a740"		
Last-Modified: Thu, 12 May 2016 07:00:05 GMT		
Miscellaneous		
Accept-Ranges: bytes		
Server: Apache/2.2.15 (Scientific Linux)		
X-Check-Cacheable: YES		
X-Hostname: @@HOSTNAME@@		
X-Served-By: Classic		
Transport		
Connection: keep-alive		

FIGURE 18

<?xml version="1.0" encoding="utf-8"?>
<button xmlns="http://websearch.ask.com/widgets">
<title>obviate</title>
</button>

25. The Ask.com Toolbar of the user Internet device is configured to receive the updated toolbar data and initiates an operation that includes, for example, updating the toolbar data in accordance with the received updated toolbar data without user interaction. The Ask.com Toolbar receives the updated toolbar data, for example, in the form of the latest “Word of the Day”, and modifies an attribute of at least one of the one or more toolbar buttons of the toolbar, such as by displaying the word on the “Word of the Day” button in the toolbar as show below in FIGURE 19.

FIGURE 19

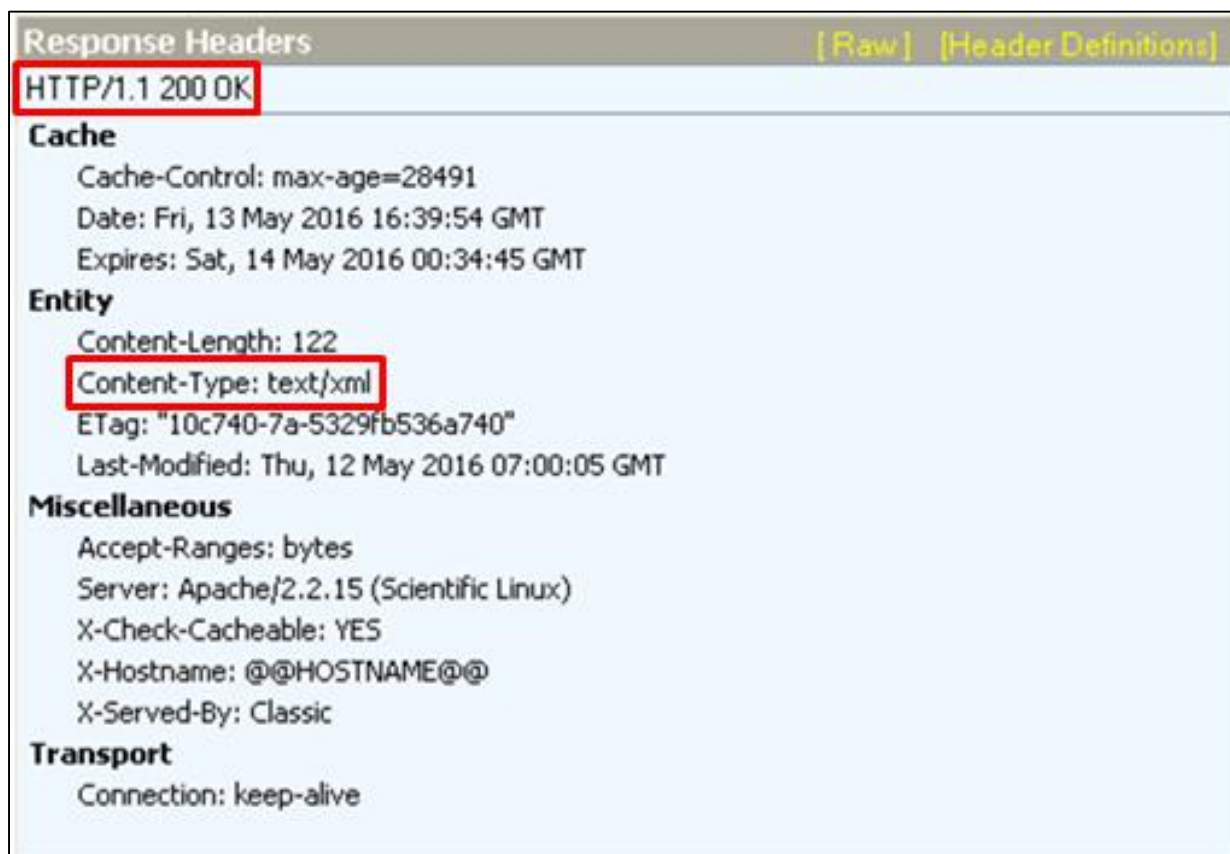


26. The Ask.com Toolbar of the user Internet device is configured to receive the updated toolbar data and perform an operation that includes, for example, updating the toolbar data to modify an attribute of at least one of the one or more toolbar buttons of the toolbar. The Ask.com Toolbar receives the updated toolbar data from a remote server.

27. For example, as shown below in FIGURES 20-21, the server at IP address 184.86.250.25 sends the user Internet device updated toolbar data in the form of text/xml messages containing the updated toolbar data:

FIGURE 20

#	ClientBeginRequest	X-HostIP	X-Clien...	Result	Protocol	Host	URL
58	22:10:02.453	184.86.250.25	127.0.0.1	200	HTTP	www.dictionary.com	/wordoftheday/wotd.xml?cb=30950

FIGURE 21

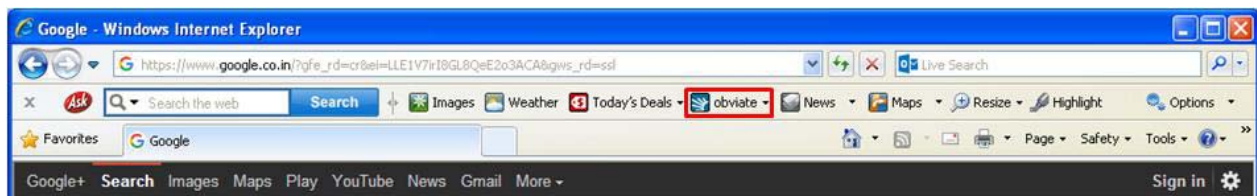
28. More particularly, the remote source sends the updated toolbar data such as the latest "Word of the Day" information in the form of XML data, for example, as shown below in FIGURE 22:

FIGURE 22

29. The Ask.com Toolbar performs the step of "updating the toolbar data to modify an attribute of at least one of the one or more toolbar buttons of the toolbar." For example, the

Ask.com Toolbar of the user Internet device is configured to receive the updated toolbar data and perform an operation that includes, for example, updating the toolbar data to modify an attribute of at least one of the one or more toolbar buttons of the toolbar. The Ask.com Toolbar receives the updated toolbar data, for example, in the form of the latest “Word of the Day”, and modifies an attribute of at least one of the one or more toolbar buttons of the toolbar, such as by displaying the word on the “Word of the Day” button in the toolbar as shown below in FIGURE 23.

FIGURE 23



30. The Ask.com Toolbar integrates with a browser, such as Internet Explorer, on a device capable of communicating with other devices over a network such as a user Internet device.

31. The Ask.com Toolbar performs each of the functions described in one or more claims of the Asserted Patents, including the functions described above. In particular, the Ask.com Toolbar software embedded in the browser of the user Internet device and remotely located, such as on a server remote from the user Internet device, instructs these devices to perform these functions. The Ask.com Toolbar, therefore, directs and controls the functions of the user Internet device and the remote device(s) that perform the functions described above.

32. To the extent any third party performs any of the functions described above, the performance of such functions is attributable to the Ask.com Toolbar because it directs and controls the performance of those functions.

CLAIM 1 -- INFRINGEMENT OF U.S. PATENT NO. 8,275,863

33. Plaintiff incorporates paragraphs 1 through 32 as though fully set forth herein.

34. Upon information and belief, IAC has been and is now directly infringing one or more claims of the '863 Patent by using the Ask.com Toolbar (including use for testing purposes) in the United States in violation of 35 U.S.C. § 271(a). The Ask.com Toolbar performs the method of modifying a toolbar as described in one or more of the claims of the '863 Patent.

35. In addition, or in the alternative, IAC has been and is now indirectly infringing one or more claims of the '863 Patent by inducing customers to use the Ask.com Toolbar to directly infringe one or more claims of the '863 Patent in violation of 35 U.S.C. § 271(b). The Ask.com Toolbar performs the methods of modifying a toolbar described and claimed in the '863 Patent, and IAC has engaged in indirect infringement by its conduct of providing its customers with the infringing Ask.com Toolbar in order to enable those customers to use the Ask.com Toolbar to directly infringe the '863 Patent. On information and belief, IAC has intended, and continues to intend, to induce patent infringement by its customers, and has had knowledge that its inducing acts would cause infringement or has been willfully blind to the possibility that its inducing acts would cause infringement.

36. On information and belief, IAC's customers download the accused Ask.com Toolbar and, when the customers use the Ask.com Toolbar, a method of modifying a toolbar is performed as described and claimed in the '863 Patent. Thus, IAC's customers directly infringe the claimed methods of the '863 Patent by using the Ask.com Toolbar. On information and belief, IAC is or should be aware that the Ask.com Toolbar performs the claimed methods of

modifying a toolbar and, therefore, that IAC's customers will infringe the '863 Patent by using the Ask.com Toolbar.

37. Plaintiff has been damaged by IAC's infringing activities.

CLAIM 2 – INFRINGEMENT OF U.S. PATENT NO. 9,021,070

38. Plaintiff incorporates paragraphs 1 through 32 as though fully set forth herein.

39. Upon information and belief, IAC has been and is now directly infringing one or more claims of the '070 Patent by using (including for testing purposes) the Ask.com Toolbar in violation of 35 U.S.C. § 271(a). The Ask.com Toolbar performs the method for dynamically modifying a toolbar described and claimed in the '070 Patent.

40. In addition, or in the alternative, IAC has been and is now indirectly infringing one or more claims of the '070 Patent by inducing customers to use the Ask.com Toolbar to directly infringe one or more claims of the '070 Patent in violation of 35 U.S.C. § 271(b). The Ask.com Toolbar performs the methods of modifying a toolbar described and claimed in the '070 Patent, and IAC has engaged in indirect infringement by its conduct of providing its customers with the infringing Ask.com Toolbar in order to enable those customers to use the Ask.com Toolbar to directly infringe the '070 Patent. On information and belief, IAC has intended, and continues to intend, to induce patent infringement by its customers, and has had knowledge that its inducing acts would cause infringement or has been willfully blind to the possibility that its inducing acts would cause infringement.

41. On information and belief, IAC's customers download the accused Ask.com Toolbar and, when the customers use the Ask.com Toolbar, a method of modifying a toolbar is performed as described and claimed in the '070 Patent. Thus, IAC's customers directly infringe the claimed methods of the '070 Patent by using the Ask.com Toolbar. On information and

belief, IAC is or should be aware that the Ask.com Toolbar performs the claimed methods of modifying a toolbar and, therefore, that IAC's customers will infringe the '070 Patent by using the Ask.com Toolbar.

42. Plaintiff has been damaged by IAC's infringing activities.

DEMAND FOR JURY TRIAL

43. Plaintiff, pursuant to Rule 38 of the Federal Rules of Civil Procedure, requests a trial by jury of any issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests the following relief:

1. A judgment in favor of Plaintiff that IAC has directly infringed one or more claims of the Asserted Patents;
2. A judgment and order requiring IAC to pay Plaintiff damages adequate to compensate for infringement under 35 U.S.C. § 284, which damages in no event shall be less than a reasonable royalty for the use made of the inventions of the Asserted Patents, including pre-and post-judgment interest and costs, including expenses and disbursements; and
3. Any and all such further necessary relief as the Court may deem just and proper under the circumstances.

Dated: December 20, 2016

Respectfully submitted,

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**ATTORNEYS FOR PLAINTIFF
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